

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

MICROSOFT CORPORATION, )  
v. ) Plaintiff, ) Civil Action No.  
HAROLD DAVIS, an individual d/b/a DAVIS )  
COMPUTERS, ) Defendant.  
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)

**COMPLAINT**

1. This is an action by Microsoft Corporation (“Microsoft”) to recover damages arising from infringement of Microsoft’s copyrights and trademarks in its software by Harold Davis, an individual doing business as Davis Computers (“Defendant”), and to enjoin Defendant’s future infringement.
2. Defendant distributed infringing Microsoft software, despite the fact that Microsoft had previously warned Defendant of the infringing conduct.
3. Defendant has infringed Microsoft’s copyrights and trademarks, violated the Lanham Act by falsely designating the origin of software and engaged in unfair competition.
4. Microsoft seeks damages, an accounting, the imposition of a constructive trust upon Defendant’s illegal profits, and injunctive relief.

**THE PARTIES**

5. Microsoft is a Washington corporation with its principal place of business located at One Microsoft Way, Redmond, Washington. Microsoft develops, markets, distributes and licenses computer software.

6. Upon information and belief, defendant Harold Davis is an individual doing business as Davis Computers (“Davis Computers”) in Lebanon, Pennsylvania.

7. Upon information and belief, Davis Computers is engaged in the business of advertising, marketing, installing and distributing computer hardware and software, including purported Microsoft software.

8. Upon information and belief, defendant Harold Davis does business as, owns, operates or otherwise controls Davis Computers. Upon information and belief, defendant Harold Davis resides and transacts substantial business in this district. Upon information and belief, defendant Harold Davis (a) personally participated in and/or had the right and ability to direct and control the wrongful conduct alleged in this Complaint, and (b) derived direct financial benefit from that wrongful conduct.

#### **JURISDICTION AND VENUE**

9. This Court has subject matter jurisdiction over Microsoft’s claims for trademark infringement, copyright infringement, and related claims pursuant to 15 U.S.C. § 1121, 17 U.S.C. § 501, and 28 U.S.C. §§ 1331 and 1338(a).

10. This Court has supplemental jurisdiction over Microsoft’s claims arising under the laws of the Commonwealth of Pennsylvania pursuant to 28 U.S.C. § 1337(a) because these claims are so related to Microsoft’s claims under federal law that they form part of the same case or controversy and derive from a common nucleus of operative fact.

11. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and § 1400(a) because (a) the acts of infringement and other wrongful conduct alleged occurred in the Middle District of Pennsylvania; (b) the Defendant may be found in the Middle District of Pennsylvania;

and (c) the Defendant has a sufficient connection with the Middle District of Pennsylvania to make venue proper in this district, all as alleged in this Complaint.

#### **FACTS COMMON TO ALL CLAIMS**

12. Microsoft develops, advertises, markets, distributes and licenses a number of computer software programs. Microsoft's software programs are recorded on magnetic diskettes and/or CD-ROMs, and they are packaged and distributed together with associated proprietary materials such as user's guides, user's manuals, end user license agreements, certificates of authenticity and other related components.

13. Microsoft Windows XP Professional: Microsoft has developed, advertises, markets, distributes and licenses a software package known as Microsoft Windows XP Professional ("Windows XP Pro"). Windows XP Pro is an operating system for desktop and laptop systems. It performs a number of computer-related operations including, but not limited to, providing support for various applications and allowing remote access to data and applications stored on Windows XP Pro desktops from network connections. Microsoft holds a valid copyright in Windows XP Pro (including user's reference manuals, user's guides and screen displays) that was duly and properly registered with the United States Copyright Office. A true and correct copy of the Registration Certificate for Microsoft Windows XP Pro, bearing the number TX 5-407-055, is attached hereto as Exhibit 1 and is incorporated by reference.

14. Microsoft Office Ultimate 2007: Microsoft Office Ultimate 2007 ("Office Ultimate 2007") is a suite of popular Microsoft software programs. Microsoft holds a valid copyright in Office Ultimate 2007 (including user's reference manuals, user's guides, and screen displays) that was duly and properly registered with the United States Copyright Office. A true and correct copy of the applicable Registration Certificate, bearing the number TX 6-504-552, is

attached hereto as Exhibit 2 and is incorporated by reference. Office Ultimate 2007 includes the following popular Microsoft software programs:

A. Microsoft Office Access 2007, a program that allows users to create and manipulate databases and store data. Microsoft holds a valid copyright in Microsoft Office Access 2007 (including user's reference manuals, user's guides, and screen displays) that was duly and properly registered with the United States Copyright Office. A true and correct copy of the Copyright Registration Certificate for Microsoft Office Access 2007, bearing the number TX 6-524-395, is attached hereto as Exhibit 3 and is incorporated by reference.

B. Microsoft Office Excel 2007, a program that allows users to create spreadsheets, perform calculations, and store numerical data. Microsoft holds a valid copyright in Microsoft Office Excel 2007 (including user's reference manuals, user's guides, and screen displays) that was duly and properly registered with the United States Copyright Office. A true and correct copy of the Copyright Registration Certificate for Microsoft Office Excel 2007, bearing the number TX 6-524-399, is attached hereto as Exhibit 4 and is incorporated by reference.

C. Microsoft Office Outlook 2007 with Business Contact Manager, a program that allows users and networked teams to create and manage calendars, tasks, and contacts. Microsoft holds a valid copyright in Microsoft Office Outlook 2007 with Business Contact Manager (including the software program, documentation and product packaging) that was duly and properly registered with the United States Copyright Office. A true and correct copy of the Copyright Registration Certificate for Microsoft Office Outlook 2007 with Business Contact Manager, bearing the number 5, is attached hereto as Exhibit TX 6-860-358 and is incorporated by reference.

D. Microsoft Office PowerPoint 2007, a program that allows users to create, organize, and present overhead and slide presentations. Microsoft holds a valid copyright in Microsoft Office PowerPoint 2007 (including user's reference manuals, user's guides, and screen displays) that was duly and properly registered with the United States Copyright Office. A true and correct copy of the Copyright Registration Certificate for Microsoft Office PowerPoint 2007, bearing the number TX 6-524-389, is attached hereto as Exhibit 6 and is incorporated by reference.

E. Microsoft Office Word 2007, a program that allows users to create and edit reports and documents. Microsoft holds a valid copyright in Microsoft Office Word 2007 (including user's reference manuals, user's guides, and screen displays) that was duly and properly registered with the United States Copyright Office. A true and correct copy of the Copyright Registration Certificate for Microsoft Office Word 2007, bearing the number TX 6-524-398, is attached hereto as Exhibit 7 and is incorporated by reference.

F. Microsoft Office Publisher 2007, a computer program that allows users to create, design, and publish marketing and communication materials. The copyright in Microsoft's Office Publisher 2007 (including user's reference manuals, user's guides, and screen displays) was duly and properly registered with the United States Copyright Office. A true and correct copy of the Registration Certificate for Microsoft Office Publisher 2007, bearing the number TX 6-524-388, is attached hereto as Exhibit 8 and is incorporated by reference.

G. Microsoft Office InfoPath 2007, a computer program that allows users to collect and manage data with ease using electronic forms. The copyright in Microsoft's Office InfoPath 2007 (including user's reference manuals, user's guides, and screen displays) was duly and properly registered with the United States Copyright Office. A true and correct copy of the

Registration Certificate for Microsoft Office InfoPath 2007, bearing the number TX 6-524-392, is attached hereto as Exhibit 9 and is incorporated by reference.

H. Microsoft Office Groove 2007, a computer program that allows users to collaborate, effectively putting people, tools, and data in one place. The copyright in Microsoft's Office Groove 2007 (including user's reference manuals, user's guides, and screen displays) was duly and properly registered with the United States Copyright Office. A true and correct copy of the Registration Certificate for Microsoft Office Groove 2007, bearing the number TX 6-524-390, is attached hereto as Exhibit 10 and is incorporated by reference.

I. Microsoft Office OneNote 2007, a computer program that allows users to organize text, pictures, digital handwriting, and notes in one spot so that it may be accessed and shared. The copyright in Microsoft's Office OneNote 2007 (including user's reference manuals, user's guides, and screen displays) was duly and properly registered with the United States Copyright Office. A true and correct copy of the Registration Certificate for Microsoft Office OneNote 2007, bearing the number TX 6-524-396, is attached hereto as Exhibit 11 and is incorporated by reference.

15. Microsoft has also duly and properly registered a number of trademarks and a service mark in the United States Patent and Trademark Office on the Principal Register including but not limited to:

- A. "MICROSOFT," Trademark and Service Mark Registration No. 1,200,236, for computer programs and computer programming services;
- B. "MICROSOFT," Trademark Registration No. 1,256,083, for computer hardware and software manuals, newsletters, and computer documentation;

- C. "WINDOWS," Trademark Registration No. 1,872,264 for computer programs and manuals sold as a unit;
- D. COLORED FLAG DESIGN, Trademark Registration No. 2,744,843, for computer software;
- E. "POWERPOINT," Trademark Registration No. 1,475,795, for pre-recorded computer programs recorded on magnetic disks;
- F. "MICROSOFT ACCESS," Trademark Registration No. 1,741,086, for computer programs for use with databases and manuals sold as a unit;
- G. "OUTLOOK," Trademark Registration No. 2,188,125, for computers programs, specifically programs providing enhanced electronic mail and scheduling capabilities and instructional manuals sold as a unit;
- H. COLOR FOUR SQUARE LOGO, Trademark Registration No. 2,999,281, for computer software, including application and business software for use in word processing, spreadsheets, presentation graphics, e-mail, and scheduling;
- I. "ONENOTE," Trademark Registration No. 2,844,710 for computer software for use in note-taking; and
- J. "INFOPATH," Trademark Registration No. 2,890,260 for computer software to design, create, edit and publish documents;

True and correct copies of the Trademark Registrations for A through J above are attached hereto as Exhibits 12 through 21, respectively, and are incorporated herein by reference.

**Defendant's Infringement**

16. Defendant advertises, markets, installs and distributes computer software, including software programs covered by Microsoft's registered copyrights and bearing Microsoft's registered trademarks or imitations thereof.

17. By means including a letter dated March 18, 2008, Microsoft notified Defendant that it had received a report that Defendant may have distributed infringing Microsoft software and that such conduct constitutes an infringement of Microsoft's intellectual property rights.

18. Nevertheless, in August 2008, Defendant distributed to an investigator a computer system with infringing Windows XP Pro software and computer systems with infringing Office Ultimate 2007 software.

19. Upon information and belief, these are not isolated incidents. Rather, Defendant has been and continues to be involved in advertising, marketing, installing and/or distributing infringing copies of Microsoft's software to unidentified persons or entities. Upon information and belief, Defendant's distributions of purported Microsoft software are the result of Defendant's advertising and marketing the availability of such materials.

20. Upon information and belief, Defendant's wrongful conduct includes the advertising, marketing, installing and/or distribution of "infringing materials," specifically reproductions, copies or colorable imitations of the Microsoft copyrighted software and/or the Microsoft trademarks, logos and service mark described in this Complaint.

21. Upon information and belief, Defendant has committed and is continuing to commit acts of copyright and trademark infringement against Microsoft. Upon information and belief, at a minimum, Defendant was willfully blind and acted in reckless disregard of Microsoft's registered copyrights and marks.

22. Upon information and belief, by the advertising activities and unauthorized use of Microsoft's marks to describe the items that they are distributing, Defendant has misappropriated Microsoft's advertising ideas and style of doing business and has infringed Microsoft's copyrights, titles and slogans.

23. Upon information and belief, the injuries and damages that Microsoft has sustained have been directly and proximately caused by Defendant's wrongful misappropriation of Microsoft's advertising ideas and style of doing business and infringement of Microsoft's copyrights, titles and slogans.

## COUNT I

### (Copyright Infringement)

24. Microsoft repeats and incorporates by this reference each and every allegation set forth in paragraphs 1 through 23 inclusive.

25. Microsoft is the sole owner of Microsoft Windows XP Pro, Office Enterprise 2007, Office Excel 2007, Office Outlook 2007, Office PowerPoint 2007, Office Publisher 2007, Office Word 2007, Office Access 2007, Office InfoPath 2007, Office Groove 2007, Office OneNote 2007, and of their corresponding copyrights and Certificates of Registration.

26. Defendant has infringed the copyrights in Microsoft's software, including but not limited to Microsoft Windows XP Pro, Office Enterprise 2007, Office Excel 2007, Office Outlook 2007, Office PowerPoint 2007, Office Publisher 2007, Office Word 2007, Office Access 2007, Office InfoPath 2007, Office Groove 2007, and Office OneNote 2007 software, by distributing infringing materials in the United States without approval or authorization from Microsoft.

27. Defendant's conduct has been willful within the meaning of the Copyright Act. At a minimum, Defendant acted with willful blindness to and in reckless disregard of Microsoft's registered copyrights.

28. As a result of the wrongful conduct, Defendant is liable to Microsoft for copyright infringement. 17 U.S.C. § 501. Microsoft has suffered damages. Microsoft is entitled to recover damages, which include any and all profits Defendant has made as a result of the wrongful conduct. 17 U.S.C. § 504. Alternatively, Microsoft is entitled to statutory damages under 17 U.S.C. § 504(c).

29. In addition, because Defendant's infringement has been willful within the meaning of the Copyright Act, any award of statutory damages should be enhanced in accordance with 17 U.S.C. § 504(c)(2).

30. Microsoft is also entitled to injunctive relief pursuant to 17 U.S.C. § 502 and to an order impounding any and all infringing materials pursuant to 17 U.S.C. § 503. Microsoft has no adequate remedy at law for Defendant's wrongful conduct because, among other things, (a) Microsoft's copyrights are unique and valuable property which have no readily determinable market value, (b) Defendant's infringement harms Microsoft such that Microsoft could not be made whole by any monetary award, and (c) Defendant's wrongful conduct and the resulting damage to Microsoft is continuing.

31. Microsoft is also entitled to recover its attorneys' fees and costs of suit. 17 U.S.C. § 505.

## COUNT II

### (Trademark Infringement)

32. Microsoft repeats and incorporates by this reference each and every allegation set forth in paragraphs 1 through 31, inclusive.

33. Defendant's activities constitute infringement of Microsoft's federally registered trademarks and service mark in violation of the Lanham Act, including but not limited to 15 U.S.C. § 1114(1).

34. Because Microsoft advertises, markets, distributes and licenses its software under the trademarks and service mark described in this Complaint, these trademarks and service mark are the means by which Microsoft's software is distinguished from the software or products of others in the same field or related fields.

35. Because of Microsoft's long, continuous and exclusive use of these trademarks and service mark, they have come to mean and are understood by customers, end users and the public to signify software or services of Microsoft.

36. The infringing materials that Defendant has and is continuing to use, offer, advertise, market, install or distribute are likely to cause confusion, mistake or deception as to their source, origin or authenticity.

37. Further, Defendant's activities are likely to lead the public to conclude, incorrectly, that the infringing materials that Defendant is advertising, marketing, installing or distributing originate with or are authorized by Microsoft, to the damage and harm of Microsoft, its licensees and the public.

38. Upon information and belief, Defendant used, offered, advertised, marketed, installed or distributed infringing material with the purposes of misleading, deceiving or

confusing customers and the public as to the origin and authenticity of the infringing materials, and of trading upon Microsoft's goodwill and business reputation.

39. Defendant's conduct has been willful within the meaning of the Lanham Act. At a minimum, Defendant acted with willful blindness to and in reckless disregard of Microsoft's registered marks.

40. As a result of the wrongful conduct, Defendant is liable to Microsoft for trademark infringement. 15 U.S.C. § 1114(1). Microsoft has suffered and will continue to suffer substantial damages. Microsoft is entitled to recover damages, which include any and all profits Defendant has made as a result of the wrongful conduct. 15 U.S.C. § 1117(a).

41. In addition, because Defendant's infringement of Microsoft's trademarks and service mark was willful within the meaning of the Lanham Act, the award of actual damages and profits should be trebled pursuant to 15 U.S.C. §1117(b). In the alternative, Microsoft is entitled to statutory damages for each counterfeit mark. 15 U.S.C. § 1117(c).

42. Microsoft is also entitled to injunctive relief pursuant to 15 U.S.C. § 1116(a). Microsoft has no adequate remedy at law for Defendant's wrongful conduct because, among other things, (a) Microsoft's trademarks and service mark are unique and valuable property which have no readily determinable market value, (b) Defendant's infringement constitutes harm to Microsoft such that Microsoft could not be made whole by any monetary award, (c) if Defendant's wrongful conduct is allowed to continue, the public is likely to become further confused, mistaken or deceived as to the source, origin or authenticity of the infringing materials, and (d) Defendant's wrongful conduct and the resulting damage to Microsoft is continuing.

43. Microsoft is also entitled to recover its attorneys' fees and costs of suit. 15 U.S.C. § 1117.

### COUNT III

#### (False Designation Of Origin, False Description, And False Representation Of Microsoft Packaging)

44. Microsoft repeats and incorporates by this reference each and every allegation set forth in paragraphs 1 through 43, inclusive.

45. Because Microsoft advertises, markets, distributes and licenses its software under the trademarks and service mark described in this Complaint, these trademarks and service mark are the means by which Microsoft's software is distinguished from the software or products of others in the same field or related fields.

46. Because of Microsoft's long, continuous and exclusive use of these trademarks and service mark, they have come to mean, and are understood by customers, end users and the public to signify software or services of Microsoft.

47. Microsoft has also designed distinctive and aesthetically pleasing displays, logos, icons, graphic images and packaging (collectively, "Microsoft visual designs") for its software and related components.

48. Defendant's wrongful conduct includes the use of Microsoft's marks, name and imitation visual designs, specifically displays, logos, icons, graphic designs and packaging virtually indistinguishable from Microsoft visual designs, in connection with his goods and services.

49. Upon information and belief, Defendant engaged in such wrongful conduct with the willful purpose of misleading, deceiving or confusing customers and the public as to the origin and authenticity of the goods and services offered, marketed or distributed in connection with Microsoft's marks, name and imitation visual designs, and of trading upon Microsoft's

goodwill and business reputation. Defendant's conduct constitutes (a) false designation of origin, (b) false description and (c) false representation that the imitation visual images originate from or are authorized by Microsoft, all in violation of § 43(a) of the Lanham Act, set forth at 15 U.S.C. § 1125(a).

50. Defendant's wrongful conduct is likely to continue unless restrained and enjoined.

51. As a result of Defendant's wrongful conduct, Microsoft has suffered and will continue to suffer damages. Microsoft is entitled to injunctive relief and to an order compelling the impounding of all imitation marks and visual designs being used, offered, advertised, marketed, installed or distributed by Defendant. Microsoft has no adequate remedy at law for Defendant's wrongful conduct because, among other things, (a) Microsoft's marks, name and visual designs are unique and valuable property which have no readily-determinable market value, (b) Defendant's advertising, marketing, installation or distribution of imitation visual designs constitutes harm to Microsoft such that Microsoft could not be made whole by any monetary award, and (c) Defendant's wrongful conduct and the resulting damage to Microsoft is continuing.

#### **COUNT IV**

##### **(Pennsylvania Common Law Unfair Competition)**

52. Microsoft repeats and incorporates by this reference each and every allegation set forth in paragraphs 1 through 51, inclusive.

53. The acts and conduct of Defendant as alleged above in this Complaint constitute unfair competition pursuant to the common law of the Commonwealth of Pennsylvania.

54. The acts and conduct of Defendant are likely to cause confusion and mistake among customers, end users and the public as to the origin or association of Defendant's

infringing Microsoft software. These acts and conduct are likely to lead the public to conclude, incorrectly, that the infringing Microsoft software installed, distributed, solicited for distribution, offered, advertised and marketed by Defendant originate with, are sponsored by, or are authorized by Microsoft, to the damage and harm of Microsoft, its licensees and the public.

55. Defendant's conduct as alleged above has damaged Microsoft and resulted in an illicit gain of profit to Defendant in an amount that is unknown at the present time.

## **COUNT V**

### **(For Imposition Of A Constructive Trust Upon Illegal Profits)**

56. Microsoft repeats and incorporates by this reference each and every allegation set forth in paragraphs 1 through 55, inclusive.

57. Defendant's conduct constitutes deceptive, fraudulent and wrongful conduct in the nature of passing off the infringing materials as genuine Microsoft software approved or authorized by Microsoft.

58. By virtue of the wrongful conduct, Defendant has illegally received money and profits that rightfully belong to Microsoft.

59. Upon information and belief, Defendant holds the illegally received money and profits in the form of bank accounts, real property or personal property that can be located and traced.

60. Defendant holds the money and profits he has illegally received as constructive trustees for the benefit of Microsoft.

**COUNT VI**

**(Accounting)**

61. Microsoft repeats and incorporates by this reference each and every allegation set forth in paragraphs 1 through 60, inclusive.

62. Microsoft is entitled, pursuant to 17 U.S.C. § 504 and 15 U.S.C. § 1117, to recover any and all profits of Defendant that are attributable to the acts of infringement.

63. Microsoft is entitled, pursuant to 17 U.S.C. § 504 and 15 U.S.C. § 1117, to actual damages or statutory damages sustained by virtue of Defendant's acts of infringement.

64. The amount of money due from Defendant to Microsoft is unknown to Microsoft and cannot be ascertained without a detailed accounting by Defendant of the precise number of units of infringing material offered for distribution and distributed by Defendant.

**PRAYER FOR RELIEF**

WHEREFORE, Microsoft respectfully requests judgment against the Defendant as follows:

- (1) That the Court enter a judgment against Defendant that he has:
  - (a) willfully infringed Microsoft's rights in the following federally registered copyrights under 17 U.S.C. § 501:
    - (1) TX 5-407-055 ("Windows XP Professional");
    - (2) TX 6-504-552 ("Microsoft Office Ultimate 2007");
    - (3) TX 6-524-395 ("Microsoft Office Access 2007");
    - (4) TX 6-524-399 ("Microsoft Office Excel 2007");
    - (5) TX 6-860-358 ("Microsoft Office Outlook 2007 with Business Contact Manager")

- (6) TX 6-524-389 (“Microsoft Office PowerPoint 2007”);
- (7) TX 6-524-398 (“Microsoft Office Word 2007”);
- (8) TX 6-524-388 (“Microsoft Office Publisher 2007”);
- (9) TX 6-524-392 (“Microsoft Office InfoPath 2007”);
- (10) TX 6-524-390 (“Microsoft Office Groove 2007”); and
- (11) TX 6-524-396 (“Microsoft Office OneNote 2007”);

(b) willfully infringed Microsoft’s rights in the following federally registered trademarks and service mark under 15 U.S.C. § 1114:

- (1) 1,200,236 (“MICROSOFT”);
- (2) 1,256,083 (“MICROSOFT”);
- (3) 1,872,264 (“WINDOWS”);
- (4) 2,744,843 (COLORED FLAG DESIGN);
- (5) 1,475,795 (“POWERPOINT”);
- (6) 1,741,086 (“MICROSOFT ACCESS”);
- (7) 2,188,125 (“OUTLOOK”);
- (8) 2,999,281 (COLOR FOUR SQUARE LOGO);
- (9) 2,844,710 (“ONENOTE”); and
- (10) 2,890,260 (“INFOPATH”);

(c) committed and are committing acts of false designation of origin, false or misleading description of fact and false or misleading representation against Microsoft, in violation of 15 U.S.C. § 1125(a);

(d) engaged in unfair methods of competition in violation of Pennsylvania common law; and

(e) otherwise injured the business reputation and business of Microsoft by Defendant's acts and conduct set forth in this Complaint.

(2) That the Court issue injunctive relief against Defendant, and that Defendant, any directors, principles, officers, agents, representatives, servants, employees, attorneys, successors and assigns, and all others in active concert or participation with Defendant, be enjoined and restrained from:

(a) imitating, copying or making any other infringing use or infringing distribution of software program, components and/or items protected by Microsoft's registered trademarks and service mark, including, but not limited to, the following Trademark Registration Nos.:

- (1) 1,200,236 ("MICROSOFT");
- (2) 1,256,083 ("MICROSOFT");
- (3) 1,872,264 ("WINDOWS");
- (4) 2,744,843 (COLORED FLAG DESIGN);
- (5) 1,475,795 ("POWERPOINT");
- (6) 1,741,086 ("MICROSOFT ACCESS");
- (7) 2,188,125 ("OUTLOOK");
- (8) 2,999,281 (COLOR FOUR SQUARE LOGO);
- (9) 2,844,710 ("ONENOTE"); and
- (10) 2,890,260 ("INFOPATH");

or the software programs, components and/or items protected by the following Certificates of Copyright Registration Nos.:

- (1) TX 5-407-055 ("Windows XP Professional");

- (2) TX 6-504-552 (“Microsoft Office Ultimate 2007”);
- (3) TX 6-524-395 (“Microsoft Office Access 2007”);
- (4) TX 6-524-399 (“Microsoft Office Excel 2007”);
- (5) TX 6-860-358 (“Microsoft Office Outlook 2007 with Business Contact Manager”)
- (6) TX 6-524-389 (“Microsoft Office PowerPoint 2007”);
- (7) TX 6-524-398 (“Microsoft Office Word 2007”);
- (8) TX 6-524-388 (“Microsoft Office Publisher 2007”);
- (9) TX 6-524-392 (“Microsoft Office InfoPath 2007”);
- (10) TX 6-524-390 (“Microsoft Office Groove 2007”); and
- (11) TX 6-524-396 (“Microsoft Office OneNote 2007”);

and any other work now or hereafter protected by any Microsoft trademark or copyright;

(b) manufacturing, assembling, producing, distributing, offering for distribution, circulating, selling, offering for sale, advertising, importing, promoting or displaying any software programs, components, and/or items bearing any simulation, reproduction, counterfeit, copy or colorable imitation of any of Microsoft’s registered trademarks, service mark or copyrights, including, but not limited to, the Trademark, Service Mark and Copyright Registration Numbers listed in Section (2)(a) above;

(c) using any simulation, reproduction, counterfeit, copy or colorable imitation of Microsoft’s registered trademarks, service mark or copyright including, but not limited to, the Trademark, Service Mark and Copyright Registration Numbers listed in Section (2)(a) above, in connection with the manufacture, assembly, production, distribution, offering for

distribution, circulation, sale, offering for sale, import, advertisement, promotion or display of any software program, component and/or item not authorized or licensed by Microsoft;

(d) using any false designation of origin or false description which can or is likely to lead the trade or public or individuals erroneously to believe that any software, component and/or item has been manufactured, assembled, produced, distributed, offered for distribution, circulated, sold, offered for sale, imported, advertised, promoted, displayed, licensed, sponsored, approved or authorized by or for Microsoft, when such is not true in fact;

(e) engaging in any other activity constituting an illegal distribution of any Microsoft items and/or infringement of any of Microsoft's trademarks, service mark and/or copyrights or of Microsoft's rights in, or right to use or to exploit these trademarks, service mark and/or copyrights; and

(f) assisting, aiding or abetting any other person or business entity in engaging in or performing any of the activities referred to in subparagraphs (a) through (e) above.

(3) That the Court enter an order declaring that Defendant hold in trust, as constructive trustee for the benefit of Microsoft, the illegal profits obtained from the distribution of infringing copies of Microsoft's software and requiring Defendant to provide Microsoft a full and complete accounting of all amounts due and owing to Microsoft as a result of Defendant's illegal activities.

(4) That the Court order Defendant to pay Microsoft's general, special, actual and statutory damages as follows:

(a) Microsoft's damages and Defendant's profits pursuant to 17 U.S.C. § 504(b), or, in the alternative, enhanced statutory damages pursuant to

17 U.S.C. § 504(c)(2), for Defendant's willful infringement of Microsoft's copyrights;

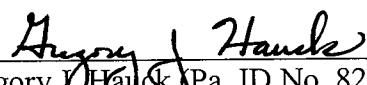
(b) Microsoft's damages and Defendant's profits pursuant to 15 U.S.C. § 1117(a), trebled pursuant to 15 U.S.C. § 1117(b) for Defendant's willful violation of Microsoft's registered trademarks and service mark, or, in the alternative, statutory damages pursuant to 15 U.S.C. § 1117(c) for each counterfeit mark; and

(c) Microsoft's damages pursuant to Pennsylvania common law;

(5) That the Court order Defendant to pay to Microsoft both the costs of this action and the reasonable attorneys' fees incurred by Microsoft in prosecuting this action; and

(6) That the Court grant to Microsoft such other and additional relief as is just and proper.

Dated: October 19, 2009

  
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